

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Federal-State Joint Board on Universal Service)	CC Docket No. 96-45
)	
TRACFONE WIRELESS, INC.)	
)	
Petition for Designation as an Eligible)	
Telecommunications Carrier in the State of)	
Connecticut)	
)	
Petition for Designation as an Eligible)	
Telecommunications Carrier in the)	
Commonwealth of Massachusetts)	
_____)	

COMMENTS OF THE UNITED STATES TELECOM ASSOCIATION

The United States Telecom Association (USTA)¹ submits its comments through the undersigned in the above-referenced dockets.

DISCUSSION

TracFone Wireless, Inc. (TracFone), a provider of prepaid Commercial Mobile Radio Service (CMRS), requests designation as an Eligible Telecommunications Carrier (ETC) pursuant to section 214(e)(6) of the Communications Act of 1934, as amended (Act), in Connecticut and Massachusetts. TracFone admits that it provides CMRS service only by reselling the services of other carriers – in other words, it is a pure reseller – and recognizes that section 214(e)(1)(A) states that ETCs shall offer services supported by universal service either over their own facilities or over a combination of their own facilities and resale of another

¹ USTA is the nation's oldest trade organization for the local exchange carrier industry. USTA's carrier members provide a full array of voice, data, and video services over wireline and wireless networks.

carrier's services. TracFone further notes that it has separately requested that the Federal Communications Commission (FCC or Commission) forbear from enforcing the facilities-based requirement of section 214(e)(1)(A). Finally, TracFone maintains that it does not seek ETC status in order to obtain universal service support for the purpose of providing service to high cost areas, but rather for the purpose of providing Lifeline service to eligible low income consumers.

USTA urges the Commission to deny TracFone's ETC Petitions in both Connecticut and Massachusetts.

The Act is clear that there is a facilities-based requirement that must be met in order for ETCs to receive universal service support. Importantly, the Commission has recently affirmed this express mandate in an Order on Reconsideration, stating "that, in order to be eligible for universal service subsidies, a carrier *must* use its 'own facilities' or a combination of its own facilities and another carrier's services in the provision of supported services. Resellers providing resold services from facilities-based carriers do not use their 'own facilities' to provide the supported services. As such, *pure resellers cannot receive support consistent with this statutory requirement.*"² Like the request of Mobile Satellite Ventures Subsidiary LLC regarding the facilities requirement of section 214(e)(1)(A) in its petition for reconsideration, to which the Commission addressed this most recent affirmation of the Act's facilities-based requirement, TracFone merely wishes to argue its different interpretation of the statute regarding the same facilities requirement in its Petition for Forbearance on that matter.³ TracFone's

² *Federal-State Joint Board on Universal Service*, Order on Reconsideration, CC Docket No. 96-45, FCC 04-237, ¶9 (rel. Nov. 29, 2004) (emphasis added).

³ *See id.* In its Petition for Forbearance, TracFone disagrees with the Commission's premise that all resold services receive universal service support and that providing universal service support

request for forbearance from the facilities-based requirement should be moot based on the Commission's most recent affirmation of this requirement. The fact that TracFone is a pure reseller is itself a sufficient basis for denying TracFone's Connecticut and Massachusetts ETC Petitions.⁴

USTA has already separately addressed TracFone's claims that it seeks ETC status solely for the purpose of receiving support to provide service to low income consumers, not for the purpose of providing service in high cost areas, in reply comments that USTA filed in response to the Commission's request for comment on AT&T's Petition for limited reconsideration of the Commission's Lifeline and Link-Up Order⁵ and on TracFone's amendments to its petitions seeking ETC designation in Florida, New York, and Virginia. There, USTA emphasized that TracFone's statements that it would agree to limit its universal service support to disbursements from the low income mechanism do not change the ETC designation requirements of the Act or

to resellers would result in them receiving double recovery – that is, resale rates that incorporate universal service support to the underlying carrier and then additional universal service support provided directly to the reseller. TracFone also states in its Petition for Forbearance that most of the carriers that provide the underlying CMRS service that it resells do not receive universal service support and thus there is no double recovery. *See Federal-State Joint Board on Universal Service*, Petition for Forbearance of TracFone Wireless, Inc., CC Docket No. 96-45 at 2 and 9 (filed June 8, 2004).

⁴ *See also Federal-State Joint Board on Universal Service; Lifeline and Link-Up*, Comments of the United States Telecom Association, CC Docket No. 96-45, WC Docket No. 03-109 at 4-5 (filed Sept. 20, 2004) (addressing TracFone's petitions for ETC status in Florida, New York, and Virginia).

⁵ *See Lifeline and Link-Up*, Petition of AT&T Corp. for Limited Reconsideration, WC Docket No. 03-109 (filed July 21, 2004) (Petition). *See also Lifeline and Link-Up*, Report and Order and Further Notice of Proposed Rulemaking, WC Docket No. 03-109, 19 FCC Rcd 8302 (2004) (Lifeline and Link-Up Order).

the Commission's obligations to ensure those requirements are met.⁶ USTA also noted that there is nothing to prevent TracFone from changing its position at some later date after it has been designated as an ETC, despite its agreement that its ETC designation is based on the condition of receiving low income support only, and thereafter seeking support from the high cost mechanism because an ETC, once designated, is eligible to receive support from either the high cost mechanism, the low income mechanism, or both mechanisms.⁷ Lastly, USTA stressed that conditioning a grant of ETC status to TracFone on receipt of low income support only would be in violation of the section 214(e)(1) requirement to offer the supported services under section 254(c).⁸ We reiterate those comments here.

⁶ See *Federal-State Joint Board on Universal Service; Lifeline and Link-Up*, Reply Comments of the United States Telecom Association, CC Docket No. 96-45, WC Docket No. 03-109 at 4 (filed Oct. 4, 2004) (USTA Lifeline and Link-Up Reply Comments).

⁷ See *id.* at 4-5.

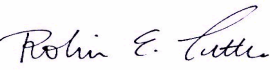
⁸ See *id.* at 5. Section 254(c) states that services supported by federal universal service "shall consider the extent to which such telecommunications services (A) are essential to education, public health, or public safety; (B) have through the operation of market choices by customers been subscribed to by a substantial majority of residential customers; (C) are being deployed in public telecommunications networks by telecommunications carriers; and (D) are consistent with the public interest, convenience, and necessity." 47 U.S.C. §254(c)(1). "Certainly offering service that is discounted through the Lifeline program is one way of fulfilling the 1996 Act's universal service mandate, as long as all the supported services are included in the Lifeline offering, but the 1996 Act also mandates that an ETC provide supported services to the entire customer base, whether or not a customer is eligible to participate in the Lifeline program." USTA Lifeline and Link-Up Reply Comments at 5. "Therefore, offering only Lifeline service would not be in compliance with the requirements of section 254(c)." *Id.*

CONCLUSION

For the reasons states above, USTA urges the Commission to deny TracFone's petitions seeking ETC status on Connecticut and Massachusetts.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Meena Joshi, do certify that on December 15, 2004, the aforementioned Comments of The United States Telecom Association were electronically filed with the Commission through its Electronic Comment Filing System and were electronically mailed to the following:

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